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28 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC.;
COXCOM, LLC; and COX
COMMUNICATIONS CALIFORNIA,
LLC,

Defendants.

LEAD CASE:

Case No. 2:23-cv-1043-JWH-KES

RELATED CASE:

Case No. 2:23-cv-1047-JWH-KES

**COX DEFENDANTS' RESPONSE TO
ENTROPIC'S MOTION TO DISMISS
COUNTERCLAIMS**

REDACTED DOCUMENT SOUGHT TO BE SEALED

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS,
7 LLC; MAXLINEAR
8 COMMUNICATIONS LLC; AND
9 MAXLINEAR, INC.

Counter-Defendants

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I. INTRODUCTION

Cox’s counterclaims arise out of the fact that the original owners of the asserted patents—the MaxLinear entities—were signatories to, founders of and/or participants in MoCA. As a result, the MaxLinear entities were contractually bound by the MoCA IPR policy. Cox, as a former member of MoCA, was a beneficiary of those contractual obligations. The MoCA IPR Policy imposed obligations on MaxLinear to ensure it had the ability to grant licenses on “RAND” terms to any patents with claims essential to the MoCA standards.

MaxLinear knew that, to the extent it sought to monetize the asserted patents against Cox, it was bound by the RAND requirements under the MoCA IPR Policy. So, MaxLinear transferred numerous patents, including the asserted patents, to Plaintiff via assignments seeking to avoid the RAND encumbrances in exchange for payment and an interest in any profits Plaintiff may receive from assertion of the patents. Through this transfer, MaxLinear breached the MoCA IPR Policy by denying Cox and others the benefit of the fully paid-up license as well as assignment obligations, resulting in avoidance of the assignment. Further, Plaintiff induced MaxLinear’s breach to acquire the patents unencumbered so they could both reap an illegal profit. MaxLinear’s breach caused and is causing significant harm to Cox.

Plaintiff asserts certain patents it acquired from MaxLinear against Cox based on allegations that the asserted patents are essential to MoCA standards. Cox thus asserted claims for breach of contract and unjust enrichment against MaxLinear (Counts I and IV), a claim for tortious interference with contract against Plaintiff (Count III), and a declaratory judgment claim against both parties that the assignment of the asserted patents was void (Count II). Plaintiff has moved to dismiss Counts II and III for failure to state a claim, repeatedly challenging the truth of Cox’s allegations rather than their sufficiency. But the counterclaims do set forth facts identifying a valid contract and alleging Plaintiff’s knowledge of the contract and MaxLinear’s obligations thereunder. The counterclaims further plead facts alleging MaxLinear’s

1 transfer of the asserted patents to Plaintiff breached these obligations, causing harm
2 to Cox and voiding the assignment. The counterclaims also make numerous factual
3 allegations of Plaintiff’s intentional actions, which are more than sufficient to state a
4 claim for tortious interference.

5 Forced to face the consequences of its actions, Plaintiff seeks to muddle the
6 issues by deliberately misreading the Counterclaims and raising purported factual
7 disputes that are inappropriate under the 12(b)(6) standard. Cox’s pleading speaks for
8 itself—Cox more than adequately pleads Counts II and III. Accordingly, this Court
9 should deny Plaintiff’s Motion.

10 **II. SUMMARY OF THE FACTS**

11 **A. MoCA and the IPR Policy’s Application to Cox in Light of Plaintiff’s** 12 **Complaint**

13 To protect entities implementing or using essential MoCA technology, the
14 Intellectual Property Rights Policy (“IPR Policy”) contained specific and detailed
15 requirements applicable to any patents containing or potentially containing claims
16 essential to the MoCA standards. Generally, the IPR Policy obligated MaxLinear to
17 provide licenses to any patents containing patent claims essential to such standards on
18 fair, reasonable, and nondiscriminatory terms. (DE 266-1, ¶¶ 538-39, 544-50). It also
19 required MaxLinear to represent, warrant, and covenant that it had the power and
20 authority to bind itself to the IPR policy, including by granting the relevant patent
21 licenses. (*Id.*, ¶ 548; DE 94-1, § 4.1.2). And it required yet another representation,
22 warranty, and agreement that MaxLinear “has not and will not intentionally transfer
23 or otherwise encumber its” potential essential patents “for the purpose of
24 circumventing the obligation to grant licenses contained in this IPR Policy.” (*Id.*)

25 As a founder and member of MoCA—currently and during Cox’s
26 membership—MaxLinear was aware that Cox, as a former participant and member of
27 MoCA, would have been induced to rely upon the IPR commitments, representations,
28 and warranties made by Entropic and MaxLinear in connection with MoCA. (DE 266-

1 1, at ¶¶ 531-550). Indeed, Plaintiff acknowledges that MoCA issued the IPR Policy—
2 the “Intellectual Property Rights (IPR) Policy” attached as Exhibit A to the
3 counterclaims (DE 96)—“[t]o encourage industry participants to adopt MoCA
4 technology and the MoCA standard.” (DE 329-1 at 11).

5 Plaintiff points to Section 5.1.1 of the IPR Policy and claims that “it is the
6 responsibility of the prospective licensee to request that license from the patentee”
7 and “there is no obligation on Alliance Members to offer a license until such a request
8 is made.” (*Id.*). That is not actually true. What Section 5.1.1 recognizes is that such
9 requests may come from “any other *then-current* Alliance Party,” which is defined
10 as “a Participant or Voting Member” of MoCA. (DE 96 (IPR Policy), § 2 (definitions),
11 § 5.1.1 (emphasis added)). Aware that participants and voting members of MoCA
12 would fluctuate, the MoCA organizers specifically provided mechanisms for former
13 members to obtain the benefits of the IPR Policy. In particular, Section 7 governs the
14 survival of the IPR Policy, specifying that once a participant’s membership terminates
15 or expires, that “terminated Alliance Party shall be entitled to request or require any
16 Alliance Party to license” essential patents on FRAND terms. (*Id.*, § 7.1).

17 In short, while “then-current” participants and members of MoCA may make a
18 “written request” for a FRAND-compliant license offer and negotiations, the IPR
19 Policy recognizes and specifies that former participants, like Cox, can simply “request
20 or require” such a license. That is, in fact, what Cox has done. First, before Cox filed
21 its counterclaims, Cox’s original answer pled a license defense given “that Plaintiff
22 and/or its predecessors in interest granted rights in the Asserted Patents to Cox”), as
23 well as a FRAND defense for Plaintiff’s failure “to offer a license on terms that are
24 fair, reasonable, and non-discriminatory, as to any Asserted Patents that are
25 enforceable, valid, and standard essential,” such as via the IPR Policy. (DE 48, ¶¶
26 504, 511). Each of these defenses requested or required enforcement of Cox’s rights
27 under the MoCA IPR Policy, and they did so in writing, even though not required
28 under Section 7.1. Second, as noted in the proposed amended and supplemental

1 counterclaims, Cox also and, in any event, has specifically requested in writing
2 Entropic's proposed licensing terms that would be consistent with the IPR Policy.
3 (DE 266-1, ¶ 571).

4 Plaintiff's brief glosses over other important aspects of Cox's averments,
5 including how the IPR Policy sought to protect entities adopting such technology by
6 including specific and detailed requirements applicable to any patents containing or
7 potentially containing claims essential to the MoCA standards. (DE 266-1, ¶¶ 547-
8 549). The IPR Policy not only obligated MaxLinear to provide licenses to any patents
9 containing patent claims essential to such standards on RAND terms (*id.*, ¶ 548), but
10 also to represent, warrant, and covenant that it had the power and authority to bind
11 itself to the IPR Policy, including by granting the relevant patent licenses (*id.*, ¶ 549;
12 DE 94-1, § 4.1.2). And, it required yet another representation, warranty, and
13 agreement that MaxLinear "has not and will not intentionally transfer or otherwise
14 encumber its" potential essential patents "for the purpose of circumventing the
15 obligation to grant licenses contained in this IPR Policy." (*Id.*).

16 The IPR policy also sought to protect implementers should potentially essential
17 patents be transferred to unaffiliated third parties. Specifically, the IPR Policy set out
18 very detailed and specific terms to ensure that future IPR holders (and other MoCA
19 members) were aware of the relevant obligations continually imposed upon
20 MaxLinear given its representation, warranty, and covenant that it would have the
21 power to grant relevant licenses. For example, the IPR Policy specified in § 5.1.2 that
22 "[a]ny sale, assignment or other transfer by an Alliance Party [like MaxLinear] . . . to
23 an unaffiliated third party of . . . any patent or patent application that reasonably may
24 contain or result in an Essential Patent Claim, shall be made subject to the terms in
25 this IPR Policy." (*Id.*, ¶ 549; DE 94-1, § 5.1.2). The IPR Policy further specified, at
26 minimum, that "any agreement for transferring or assigning ... any patent or patent
27 application that reasonably may contain or result in an Essential Patent Claim,
28

1 includes a provision that such transfer or assignment is subject to existing licenses
2 and obligations to license imposed” under the IPR Policy. (*Id.*, ¶ 549).

3 **B. Plaintiff Improperly Purchases and Asserts Patents that are**
4 **Encumbered by the DOCSIS License**

5 Plaintiff was formed in 2021. (DE 1, ¶ 33). That same year, [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] (*Id.*; DE 266-1,
9 ¶¶ 556-57). Entropic makes no products, engages in no research, and offers no
10 services. Instead, Entropic was formed solely to monetize MaxLinear’s patents
11 through licensing and assertion.

12 When Plaintiff acquired these patents, however, they were already encumbered
13 with numerous obligations MaxLinear incurred, including under the MoCA IPR
14 Policy. (DE 266-1, ¶¶ 551-55). As set forth in Cox’s counterclaims, Plaintiff’s
15 Complaint contains averments concerning the relevance of MoCA to the asserted
16 patents, attaches as exhibits the asserted patents that discuss the MoCA standards,
17 expressly identifies certain claims as essential, and/or references as exhibits claim
18 charts that compare one or more claims within the asserted patents to the MoCA
19 standards. (*Id.*, ¶¶ 563-64). If the averments in Plaintiff’s complaint are true, one or
20 more of its asserted patents reasonably may contain patent claims essential to MoCA.
21 Thus, the IPR Policy is naturally relevant, as it continues to bind MaxLinear, who
22 should have ensured any assignment complied with the IPR Policy which encumbered
23 the patents. But while Plaintiff knew about MoCA and its policies, it deliberately
24 sought and obtained the patents free of encumbrances from MaxLinear and is now
25 improperly asserting these patents after refusing to provide RAND-compliant offers.
26 (DE 266-1, ¶¶ 556-73). And Plaintiff did so by inducing MaxLinear to breach the IPR
27 Policy obligations by [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]. (DE 266-
4 1, ¶¶ 570-71).

5 On March 31, 2021, MaxLinear Communications LLC executed an assignment
6 agreement (“Assignment”) that was filed with the U.S. Patent Office and purports to
7 assign the Asserted Patents to Entropic. (*Id.*, ¶ 560; *see also* DE 94-2 (Ex. B)). Notably
8 absent from the [REDACTED] t and Assignment is any provision
9 assuming the obligations MaxLinear incurred under the IPR Policy, or any of the
10 continued existence of encumbrances. (DE 266-1, ¶ 566). In fact, the Assignment
11 purports to assign “all right, title, and interest” to the relevant asserted patents and to
12 make such assignment “free and clear of all liens, claims and encumbrances other
13 than those” Plaintiff “expressly agreed in writing will continue to encumber the Patent
14 Rights after execution and delivery of this Assignment of Patent Rights.” (*Id.*, ¶ 566).
15 Yet there is no accompanying express, written agreement by Plaintiff as to the
16 continued existence of any encumbrance. (*Id.*). Likewise, the [REDACTED]
17 [REDACTED]
18 [REDACTED] in direct violation of the IPR Policy. (*Id.*).

19 The assignment by which Plaintiff purportedly acquired title to the asserted
20 patents violates the MoCA IPR Policy and is void. (*Id.*, ¶ 567). Additionally,
21 MaxLinear assigning the patents to Plaintiff to assist Plaintiff’s effort to enforce
22 patents essential to MoCA constitutes a breach of MaxLinear’s representation,
23 covenant, and warranty that it was binding itself to the obligation in the IPR Policy to
24 license the patents on RAND terms. (*Id.*, ¶¶ 576-79). Plaintiff was fully aware of
25 MaxLinear’s contractual commitments to MoCA and the relevant IPR Policy
26 thereunder. (*Id.*, ¶ 585). Nonetheless, Plaintiff induced MaxLinear’s breaches and
27 interfered with the contract to improperly assert ownership of the relevant patents and
28 entitlement to damages or royalties. (*Id.*).

1 **C. The Counterclaims Address Plaintiff’s Tortious Interference and**
2 **Void Assignment and the Significant Harm it is Causing**

3 Cox has sustained substantial, direct injuries resulting from Plaintiff’s improper
4 assertion of these patents. (DE 266-1, ¶¶ 572-73). Accordingly, Cox asserts
5 counterclaims against Plaintiff and MaxLinear. Count II asserts a claim for
6 declaratory judgment that the patent assignments executed by Plaintiff and MaxLinear
7 are void based on their violation of the obligations for assignments set forth in the
8 IPR Policy. (DE 266-1, ¶¶ 580-82).

9 Count III asserts a claim for tortious interference with contract based on
10 Plaintiff’s awareness of the MoCA IPR Policy and MaxLinear’s obligations
11 thereunder, Plaintiff’s inducement of breaches of MaxLinear’s contractual obligations
12 by inducing MaxLinear to attempt to assign various patents for Plaintiff to enforce
13 and for Plaintiff to seek damages, despite Plaintiff’s awareness that such patents may
14 reasonably contain essential patent claims, and MaxLinear’s breach of its contractual
15 obligations resulting from Plaintiff’s actions. (DE 266-1, ¶¶ 583-86).

16 **III. LEGAL STANDARD**

17 Motions to dismiss for failure to state a claim are disfavored, *see Gilligan v.*
18 *Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997), and 12(b)(6) dismissals are
19 proper only in “extraordinary” cases. *United States v. City of Redwood City*, 640 F.2d
20 963, 966 (9th Cir. 1981). “A complaint should not be dismissed unless it appears
21 beyond doubt that the plaintiff can prove no set of facts in support of the claim that
22 would entitle the plaintiff to relief.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.
23 2002).

24 Federal Rule of Civil Procedure 8(a)(2) “requires only ‘a short and plain
25 statement of the plaintiff’s claim showing that the pleader is entitled to relief,’” which
26 requires that the complaint “‘give the defendant fair notice of what the . . . claim is
27 and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
28 (2007) (third alteration in original) (citation omitted). To survive a motion to dismiss,

1 a complaint need merely plead “enough factual matter” that, when taken as true,
2 “state[s] a claim to relief that is plausible on its face.” *Id.* at 556, 570; *Ashcroft v.*
3 *Iqbal*, 556 U.S. 662, 679 (2009) (holding claim must be facially plausible to survive
4 motion to dismiss).

5 In deciding a motion to dismiss, this Court must credit all factual (but not legal)
6 assertions made in the complaint, draw all reasonable factual inferences in favor of
7 Cox, and use those factual assertions and inferences to determine whether Cox is
8 plausibly entitled to relief. Fed. R. Civ. P. 8(a), 12(b)(6); *In re Tracht Gut, LLC*, 836
9 F.3d 1146, 1150-51 (9th Cir. 2016); *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th
10 Cir. 2011). Dismissal is proper only where there is a “lack of a cognizable legal theory
11 or ... [an] absence of sufficient facts alleged under a cognizable legal theory.” *Tracht*
12 *Gut*, 836 F.3d at 1151.

13 Here, under the correctly applied standards, Cox’s counterclaims comply with
14 the Federal Rules and provide the requisite notice of Cox’s claims.

15 **IV. ARGUMENT**

16 **A. Cox Sufficiently Pled a Claim for Tortious Interference with the IPR** 17 **Policy**

18 Contrary to Plaintiff’s assertions (DE 329-1 at 12-24), Cox’s counterclaim fully
19 identifies a valid contract, Plaintiff’s knowledge of the contract, and Plaintiff’s acts
20 that induced breach or disruption of the contract and caused damage and injury to
21 Cox. (DE 266-1, ¶¶ 545-50, 556-73). Thus, Cox has alleged facts for every element
22 of a tortious interference claim. *Fam. Home & Fin. Ctr., Inc. v. Fed. Home Loan Mtg.*
23 *Corp.*, 525 F.3d 822, 825 (9th Cir. 2008) (“Under California law, a claim for
24 intentional interference with contract requires: (1) a valid contract between plaintiff
25 and a third party; (2) defendant’s knowledge of the contract; (3) defendant’s
26 intentional acts designed to induce breach or disruption of the contract; (4) actual
27 breach or disruption; and (5) resulting damage.”).

1 Plaintiff acknowledges Cox's counterclaim properly pleads a valid contract and
2 Plaintiff's knowledge of the contract. Plaintiff's attacks on the sufficiency of Cox's
3 counterclaim with respect to MaxLinear's breaches and resulting damage are based
4 on Plaintiff's mischaracterizations of Cox's claim and, in fact, ignore the actual
5 pleading. But that is not how Rule 12 works. As demonstrated below, Plaintiff's
6 challenges to the sufficiency of Cox's averments fail.

7 **1. Cox's Pleading Identifies Plaintiff's Knowledge of the**
8 **Contract and Intentional Actions to Induce MaxLinear to**
9 **Breach**

10 Cox's counterclaim sufficiently pleads the elements of a tortious interference
11 claim, including Plaintiff's knowledge of the contract (DE 266-1, ¶¶ 302-07) and
12 Plaintiff's intentional acts designed to induce MaxLinear's breach or disruption of the
13 contract (*id.*, ¶¶ 308-14). Plaintiff does not dispute Cox's averments sufficiently plead
14 Plaintiff was aware of the IPR Policy and Plaintiff's intentional acts designed to
15 induce MaxLinear's acts assigning the asserted patents in violation of the IPR Policy.
16 In fact, Plaintiff only challenges whether Cox has plausibly alleged intentional acts
17 by Plaintiff designed to induce MaxLinear's breach of its confidentiality obligations
18 under the IPR Policy, asserting Cox has not pled Plaintiff was aware of the
19 confidential nature of the MoCA documents, sought their disclosure, and was aware
20 of the terms of the membership agreements. (DE 329-1 at 24). Plaintiff's challenges
21 ignore Cox's averments and the law.

22 Factually, Cox's counterclaims do include averments that Plaintiff was aware
23 of the confidentiality of the MoCA documents (which are stamped "MoCA
24 Confidential"), sought their disclosure, and was aware of the terms of the IPR Policy
25 at least based on this information being publicly available and [REDACTED]
26 [REDACTED]. (DE 266-1, ¶¶ 561, 568-69).

27 Thus, Plaintiff's challenge falls flat.

28 Even so, the purported deficiencies Plaintiff identifies do not change the

1 sufficiency of Cox’s claim under the law. To be intentional, a defendant’s primary
2 motive does not need to be disruption. *Moore v. Apple, Inc.*, 73 F. Supp. 3d 1191,
3 1203 (N.D. Cal. 2014). To satisfy the intent element for an intentional interference
4 claim, a plaintiff must allege either that the defendant desired to interfere with the
5 plaintiff’s contractual agreements or, alternatively, that “the defendant knew that the
6 interference was certain or substantially certain to occur as a result of its action.” *Kor.*
7 *Supply Co. v. Lockheed Martin Corp.*, 131 Cal. Rptr. 2d 29, 45 (2003). As the
8 California Supreme Court held in *Korea Supply*, specific intent “is not a required
9 element of the tort of interference.” *Id.* at 46. “[I]t is sufficient to allege that the
10 defendant knew that interference with the plaintiff’s contract with a third party was
11 certain or substantially certain to occur as a result of its actions.” *Bear Down Brands*
12 *v. Bora Servs., S.R.L.*, No. SACV 22-01998-CJC (DFMx), 2023 WL 5167355, at *2
13 (C.D. Cal. May 25, 2023). Moreover, “[u]nlike tortious interference with a
14 prospective business advantage, which requires an independently wrongful act, the
15 interference with an existing contract is ‘a wrong in and of itself.’” *Tripharma, LLC*
16 *v. First Fruits Bus. Ministry LLC*, No. 8:21-cv-01806-JVS (JDEx), 2023 WL
17 2695476, at *8 (C.D. Cal. Feb. 15, 2023).

18 Consistent with this standard, Cox has affirmatively alleged facts establishing
19 Plaintiff’s intentional acts of inducement, which is sufficient for purposes of Rule 12.
20 For example, the counterclaim alleges facts showing Plaintiff knew of the MoCA
21 standards, MoCA’s IPR Policy, and MoCA membership based on publicly available
22 information and [REDACTED]

23 [REDACTED] (E.g.,
24 DE 266-1, ¶¶ 561, 568-69). Cox’s counterclaim further alleges facts showing Plaintiff
25 engaged in intentional conduct, including [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] all in breach the IPR Policy. (DE 266-1, ¶¶ 561, 568-69, 570).

5 It further alleges that Plaintiff engaged in its tortious conduct despite knowing
6 that harm to Cox was certain or substantially certain to occur as a result of Plaintiff
7 obtaining MoCA standards that form the basis of Plaintiff's infringement claims. (*Id.*,
8 ¶¶ 568-70). This meets the intentional inducement pleading requirements for tortious
9 interference. *See, e.g., Tripharma*, 2012 WL 12887079, at *16 (finding tortious
10 interference claim likely to succeed based in part on evidence of intentional actions
11 including "Defendant FFBM, with personal involvement, acquired the 892 Patent and
12 has purported to take all rights to commercially exploit it, free and clear of
13 TriPharma's rights").

14 Cox's allegations, taken as true, adequately plead that Plaintiff knew
15 interference was substantially certain to occur as a result of its improper requirement
16 that MaxLinear disclose confidential MoCA documents upon executing the [REDACTED]
17 [REDACTED]. *See Nestle USA, Inc., v. Best Foods LLC*, 562 F. Supp. 3d 626,
18 633 (C.D. Cal. 2021); *Sadow Fred Segal, LLC v. Cormackhill, LP*, No. CV 16-6653-
19 VAP (CFEx), 2017 WL 5714542, at *3, *7 (C.D. Cal. Apr. 17, 2017) (citing *Starr v.*
20 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)).

21 2. Cox Alleges Actual Breach or Disruption

22 Cox's counterclaim sufficiently pleads actual breach or disruption of the IPR
23 Policy by MaxLinear improperly assigning the asserted patents without the required
24 RAND encumbrance and disclosing confidential MoCA information to Plaintiff in
25 violation of the IPR Policy. (DE 266-1, ¶¶ 556-72). As explained below, Plaintiff's
26 arguments do nothing to change the facts alleged in Cox's counterclaim establishing
27 MaxLinear's breaches, which are sufficient for purposes of Rule 12. *See, e.g.,*
28 *Tripharma*, 2023 WL 2695476, at *9 ("To adequately plead 'actual breach or

1 disruption,’ a party may allege that the interference made performance of its contract
2 ‘more expensive or burdensome’—an actual breach is not required.”) (quoting *Pac.*
3 *Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 590 (Cal. 1990)); *Nestle USA,*
4 *Inc.*, 562 F. Supp. 3d at 633 (“Mere ‘disruption of the contractual relationship’ is all
5 Plaintiffs must show to demonstrate the disruption element.”) (citation omitted).

6 **a) Cox Alleges Facts Demonstrating MaxLinear’s Breach**
7 **by Improper Patent Assignments**

8 Cox alleges facts sufficient to plausibly show MaxLinear breached its
9 obligations under the IPR Policy when it transferred the asserted patents to Plaintiff
10 without encumbrances. (DE 266-1, ¶¶ 547-50, 576). The counterclaims detail how the
11 MoCA IPR Policy evolved to address patent hold-up, including hold-up by strangers
12 to the standards setting process. (*Id.*, ¶¶ 540-43). Because of well-known concerns
13 with non-practicing entities acquiring and asserting standard essential patents, the IPR
14 Policy detailed multiple “provisions to minimize the potential for patent hold-up or
15 patent litigation by strangers to MoCA.” (*Id.*, ¶ 544). Those provisions included
16 requirements that the standards themselves would remain confidential to MoCA
17 members. (*Id.*, ¶¶ 544-46). The IPR Policy specified that the relevant patents
18 necessary for the standards would be owned by the proper Alliance Party. (*Id.*, ¶ 547).
19 While an Alliance Party could transfer such patents, they warranted and covenanted
20 that such transfer would never be “for the purpose of circumventing the obligation to
21 grant licenses contained in this IPR Policy.” (*Id.*, ¶ 548). Any transfer required the
22 relevant agreement to acknowledge the transferred patent was “subject to existing
23 licenses and obligations to license imposed on the Alliance Party by this Agreement
24 and the Alliance Bylaws” under the IPR Policy. (*Id.*, ¶ 549). Thus, *either* MaxLinear
25 must continue to own the relevant patents *or* it must “retain the right to grant any
26 licenses for essential patents via multiple provisions” in the IPR Policy. (*Id.*, ¶ 550).

27 Plaintiff just disagrees and facially attacks the pleadings, ignoring the above
28 averment. It then tries to distinguish Section 4.1.2, but in that section MaxLinear

1 “represents, warrants and covenants ... that it has the power and authority to bind
2 itself ... to the obligations contained herein, including ... the obligation to grant patent
3 licenses.” (DE 94-1, § 4.1.2). This is a present and future promise to retain the rights
4 would maintain the right to grant licenses under the IPR Policy. *See Ticketmaster*
5 *L.L.C. v. Prestige Ent., Inc.*, 306 F. Supp. 3d 1164, 1172-73 (C.D. Cal. 2018) (under
6 California law a covenant is a promise to do or refrain from doing a specific act). The
7 continuing obligation to maintain the ability to grant such licenses is also apparent
8 from the sentence in Section 4.1.2 that MaxLinear “agrees that it has not and will not”
9 transfer relevant patents “for the purpose of circumventing the obligation to grant
10 licenses contained in this IPR Policy.” This “will not” clause shows a continuing
11 promise that MaxLinear will ensure no transfer impairs its “obligation to grant
12 licenses.”

13 Plaintiff next claims that Section 5.1.2 of the IPR Policy allows MaxLinear to
14 transfer its patents and thus there can be no breach. (*See* DE 329-1, at 16-18). But this
15 does not address the above point – MaxLinear must retain the right grant relevant
16 licenses. It is also merely attorney argument as to the meaning of various provisions
17 in the IPR Policy, which is not only legally improper on a motion to dismiss that
18 assumes the truth of Cox’s pleadings, but also incorrect. (DE 329-1 at 16-17). Section
19 5.1.2 plainly says that any sale or transfer of patents with an Essential Patent Claim
20 (A) “shall be subject to the terms in this IPR Policy” and (B) must “include[] a
21 provision that such transfer ... is subject to existing licenses and obligations to
22 license....” In other words, all the provisions Cox relies on apply and Cox properly
23 pled MaxLinear breached when it transferred in a way that violated its obligations.

24 Plaintiff then makes a series of representations that are false and irrelevant. It
25 says Cox’s averments are “demonstrably false”

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

EXHIBIT I
STANDARDS BODIES

MoCA
DOCSIS

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] is not compliance with the
4 detailed provisions of the IPR Policy, and cannot overcome Cox's averments that the
5 required language is absent in the PPA and various assignments filed with the Patent
6 Office.

7 Recognizing the Patent Purchase Agreement cannot save it, Plaintiff next
8 asserts that the associated obligations would run with the patents automatically or via
9 "successor in interest" language in § 5.1.2. (DE 239-1 at 18-23). But this again ignores
10 the point—MaxLinear must retain its "obligation to license" as the Alliance Party.
11 Moreover, Plaintiff's argument ignores Cox's averments showing that MaxLinear's
12 assignments *affirmatively* sought to strip out any encumbrance, including
13 encumbrances caused by the IPR Policy, so that Plaintiff was unconstrained by the
14 RAND license obligations to which MaxLinear was constrained. (DE 266-1, ¶¶ 540-
15 50, 556-73). It also ignores and contradicts language that both Plaintiff and
16 MaxLinear consistently point to in the IPR Policy (in §5.1.1 and 7.1) that the RAND
17 obligation is on the "Alliance Party," yet Entropic "is not and, since its formation, has
18 not been ... an Alliance Party under the IPR Policy." (DE 266-1, ¶ 561). Assignment
19 of patents, however done, cannot convert the assignee into an "Alliance Party."
20 Indeed, it is for precisely this reason that MoCA required each "Alliance Party" to
21 maintain the right to grant licenses. Nor does § 5.1.2's requirement that transferees
22 ensure future successors-in-interest understand these terms change the result, as Cox's
23 averments demonstrate MaxLinear made no such assurance.

24 Plaintiff also asserts Cox's allegations of breach are implausible because
25 MaxLinear represented in the [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] But the [REDACTED]
2 is entirely consistent with, and demonstrates the problems with, MaxLinear’s
3 breaching conduct – Plaintiff’s “blame-game” suggests MaxLinear failed to inform
4 Entropic of the full scope of obligations imposed by the IPR Policy, which goes far
5 beyond requiring some “general” RAND commitment. Moreover, MaxLinear neither
6 retained rights to satisfy the continuing obligations imposed by the IPR Policy nor
7 met the specific obligations of the IPR Policy’s transfer provisions.

8 Cox has sufficiently pled that the various assignments did not comply with the
9 IPR Policy and even sought to strip out the relevant obligations, and MaxLinear
10 breached the IPR Policy. (DE 266-1, ¶¶ 540-50, 556-573). These allegations
11 adequately plead breach or disruption. *See, e.g., Nestle USA*, 562 F. Supp. 3d at 633.

12 **b) Cox Alleges Facts Showing MaxLinear Breached its**
13 **Confidentiality Obligations**

14 Plaintiff argues the averments showing how MaxLinear breached its
15 confidentiality obligations are insufficient because Cox does not plead timing details
16 and Plaintiff says the materials were “issued” long ago. (DE 329-1 at 22-23). Plaintiff
17 points to no legal authority, and there is none, for the proposition that Cox must plead
18 the age of the materials. Indeed, “[m]ere ‘disruption of the contractual relationship’ is
19 all Plaintiffs must show to demonstrate the disruption element.” *Nestle USA, Inc.*, 562
20 F. Supp. 3d at 633 (citation omitted). Cox has done that here. At best, Plaintiff is
21 simply raising a defense that may require discovery – but as stated, it has no merit
22 since all Plaintiff says is the materials “issued” more than 5 years ago, and cites not
23 to MaxLinear’s obligation of confidentiality, but to Cox’s – which depends on the
24 date by which Cox received the information. (DE 329-1 at 22-23).

25 Moreover, Paragraph 544 pleads that the MoCA standards themselves were
26 confidential to the MoCA members, while paragraph 546 pleads that “Confidential
27 Information” included materials so “designated in writing as confidential” by MoCA
28 and “[a]ll Alliance Draft Deliverable(s), Approved Draft Deliverable or

Deliverables,” i.e., the standards themselves. (DE 266-1, ¶¶ 544, 546). Cox then quoted from those same standards, including the notice that “[t]his document and each element of this document are the Confidential Information of ... MoCA and” its members and both “may enforce such obligations of confidentiality directly.” (*Id.*, ¶ 546). Cox also pled it was a MoCA member until July 2022 and the breach occurred during that time because “immediately after entering into the Services Agreement in 2021, Plaintiff obtained copies of the otherwise confidential MoCA standards.” (*Id.*, ¶ 569). In short, the MoCA standards are confidential, and Cox can enforce MaxLinear’s breach of confidentiality. These allegations, taken as true, adequately plead actual breach or disruption. *See, e.g., Nestle USA*, 562 F. Supp. 3d at 633.

3. Cox’s Pleading Alleges Cognizable Harm

a) Cox Pled Cognizable Harm Resulting from the Improper Patent Assignments

Contrary to Plaintiff’s assertions, Cox has pled numerous forms of direct, legally cognizable injuries caused by Plaintiff’s and MaxLinear’s unlawful actions, including harm to the benefit of the bargain Cox struck with MoCA and causing Cox to incur the expense of defending this case that could not have been brought but for the breaches. (DE 266-1, ¶¶ 538-50, 571-73, 577-79, 584-86). As set forth in its counterclaims, Cox suffered direct harm from the promises that MaxLinear breached. For entirely well-justified reasons, the IPR Policy promised that Cox would only have to deal with MaxLinear in terms of obtaining any applicable license for essential patents. (DE 266-1, ¶¶ 538-50). It included multiple enforcement mechanisms to ensure that any subsequent owner of a MaxLinear essential patent would be aware of and bound by these provisions. (*Id.*, ¶¶ 548-50). Cox avers that the violation of MaxLinear’s promises resulted in a void assignment to Plaintiff – which invalid assignment ultimately led to Plaintiff improperly asserting its patents and ultimately filing this very suit, depriving Cox of the benefits of MaxLinear’s promises. (*Id.*, ¶¶ 556-73). The harms that flow from MaxLinear’s breaches are precisely the ones that

1 courts have recognized as cognizable injuries. *See, e.g., HTC Corp. v.*
2 *Telefonaktiebolaget LM Ericsson*, No. 6:18-CV-00243-JRG, 2018 WL 6617795, at
3 *4–5 (E.D. Tex. Dec. 17, 2018) (finding deprivation of contractual right to FRAND
4 license supported existence of injury in fact).

5 Plaintiff’s challenges to Cox’s averments either facially attack the truth of the
6 pleadings, wholly-ignoring the requirement that the pleadings must be accepted as
7 true, or, again, simply ignore the relevant averments.

8 First, Plaintiff asserts that Cox cannot show but-for injury because the IPR
9 Policy did not grant Cox the right to be free of actions to enforce the patents or seek
10 damages, only the right to ask for (and after asking, receive) a FRAND license offer,
11 so being sued by Entropic for something MaxLinear “was contractually authorized to
12 do cannot be a plausible allegation of ‘resulting damage’ from any alleged breach of
13 the IPR Policy.” (DE 329-1 at 14-15). Plaintiff’s argument, however, ignores the
14 actual averments in Cox’s pleading.

15 Plaintiff admits that Cox averred that Entropic had neither provided nor
16 procured a RAND offer “despite Cox’s prior request in writing.” (DE 329-1 at 15
17 (citing (DE 266-1, ¶ 571)). Plaintiff nonetheless incorrectly suggests that the details
18 of the timing and identities of Cox’s written request are both defective and crucial to
19 the sufficiency of Cox’s pleading under Rule 12. Neither Fed. R. Civ. P. 12 nor Fed.
20 R. Civ. P. 8 requires such details. Even so, Plaintiff is factually wrong. Cox made
21 written requests, including in its amended answer that originally raised its defense
22 (DE 48, ¶¶ 511, 513), the original counterclaims (DE 95), and in Cox
23 Communications’ written correspondence referenced in the counterclaims (DE 266-
24 1, ¶ 571). Plaintiff’s assertions are thus entirely meritless.

25 Indeed, Plaintiff’s reliance on Section 5.1.1 is misplaced. As Plaintiff notes,
26 Section 5.1.1 requires a RAND offer “upon the written request of any ***other then-***
27 ***current Alliance Party.***” (DE 329-1, at 15 (citing DE 94-1 (IPR Policy), 5.1.1
28 (emphasis added))). But the counterclaims explain that Cox joined MoCA in 2005

1 and left in July 2022. (DE 266-1, ¶ 552). Thus, when Cox presented these claims, Cox
2 was not a “then-current Alliance Party,” having ceased its participation in MoCA.
3 Section 7.1 is thus the operative provision; it does not specify a “written” request, but
4 instead says former members like Cox may “request or require” an appropriate RAND
5 license. (DE 266-1, ¶541; DE 94-1, § 7.1.1). Cox met those provisions simply by
6 asserting its defenses and claims. (*See, e.g.*, DE 48; DE 95; DE 266-1).

7 Plaintiff posits that Cox’s alleged harm is not cognizable because of the
8 litigation privilege. (DE 329-1 at 15). But Plaintiff’s argument mischaracterizes the
9 facts and law. First, the IPR Policy does not authorize Plaintiff’s action because Cox’s
10 counterclaim asserts tortious interference with contract against Plaintiff and that a
11 resulting harm is having to defend against this lawsuit. The litigation privilege
12 Plaintiff identifies applies when the alleged interference is bringing of the lawsuit.
13 *E.g., Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1131, 791 P.2d
14 587, 594 (1990); *Visto Corp. v. Sproqit Techs., Inc.*, 360 F. Supp. 2d 1064, 1071 (N.D.
15 Cal. 2005). That is not the case here. As set forth above, Cox’s counterclaim alleges
16 that Plaintiff interfered with the IPR Policy by inducing MaxLinear’s breach of that
17 agreement. Thus, the litigation privilege does not preclude Cox’s claim or render its
18 harm unviable.

19 Indeed, the costs of responding to Plaintiff’s assertions count as Cox’s damages
20 for MaxLinear’s breach of contract. Courts have long recognized such expenses are
21 contractual damages under these circumstances. *Copenbarger v. Morris Cerullo*
22 *World Evangelism, Inc.*, 239 Cal. Rptr. 3d 838, 844-847 (2018), for example,
23 addressed whether attorneys’ fees incurred in defending an action brought in breach
24 of a settlement agreement constituted damages for purposes of the breach of contract
25 claim. *Copenbarger* expressly held that under *Brandt v. Superior Court*, 693 P.2d 796
26 (Cal. 1985), “the principle that attorney fees qua damages are recoverable as damages,
27 and not as costs of suit, applies equally to breach of contract.” 239 Cal. Rptr. 3d at
28 845; *see also Lee v. Hum. Biostar, Inc.*, No. CV-12-05668 MWF (MRWx), 2013 WL

1 12130258, at *2 (C.D. Cal. Jan. 28, 2013) (finding breach of contract counterclaim
2 pled sufficient merit where it averred damages that were “costs incurred defending
3 [the] action, which would not exist but for” a suit filed in breach of the contracts). The
4 Federal Circuit has recognized the same point. *See Taurus IP, LLC v.*
5 *DaimlerChrysler Corp.*, 726 F.3d 1306. 1341-43 (Fed. Cir. 2013) (attorneys’ fees
6 available as damages for the pursuit of a patent suit in breach of warranty).

7 Finally, Plaintiff argues that Cox can allege no harm in having to take a RAND
8 license from Entropic instead of MaxLinear because essential patent claims would
9 continue to be subject to RAND obligations regardless of ownership. (DE 329-1 at
10 16). This is incorrect both factually and legally. Cox’s averments detailed the
11 importance of the counterparty in these situations. (DE 266-1, ¶¶ 540-44). And Cox
12 showed that it consistently performed its obligations – paying “substantial monies”
13 toward MoCA, voting on, and supporting adoption of MoCA standards, and
14 deploying MoCA via deployment of its “personnel and other resources.” (*Id.*, ¶¶ 552-
15 55). In return, the IPR Policy promised that, for parties like Cox that implement
16 MoCA-compliant equipment, as to any licensing of patents essential to MoCA, Cox
17 would be negotiating with MaxLinear, the “Alliance Party” who created those rights,
18 founded, and participated in MoCA, not some third party, non-practicing entity with
19 every incentive to avoid truly RAND terms. (*Id.*, ¶¶ 538-50). MaxLinear’s breach,
20 however, deprives Cox of the benefit of its bargain. This is a real, cognizable harm
21 Cox alleges in its counterclaims. *See Williams v. Apple, Inc.*, 449 F. Supp. 3d 892,
22 903 (2020) (finding injury for “benefit of the bargain” losses where “Plaintiffs paid
23 consideration for Apple to store Plaintiff’s data”).

24 Moreover, while Plaintiff asserts that MaxLinear *could have* brought this
25 action if it were still the patent owner, it ignores that MaxLinear *did* own the patents
26 and *did not* bring suit. And inferences on this motion are drawn in Cox’s favor and
27 the inference here is that but-for Plaintiff’s interference, no suit would be brought or
28 the identify of MaxLinear as counterparty would result in far different outcomes on

1 RAND rates. Thus, the alleged breaches do make a difference—MaxLinear cannot
2 circumvent the provisions of the IPR Policy by using a third party.

3 **b) Cox Pled Cognizable Harm Due to Disclosure of**
4 **Confidential Information**

5 Cox’s counterclaim avers cognizable harm to Cox resulting from MaxLinear’s
6 disclosure of confidential MoCA information to Plaintiff in breach of its obligations.
7 The counterclaims detail how the MoCA IPR Policy evolved to address patent hold-
8 up, including hold-up by strangers to the standards setting process. (DE 266-1, ¶¶
9 540-543). Because of well-known concerns with non-practicing entities acquiring and
10 asserting standard essential patents, the IPR Policy detailed multiple “provisions to
11 minimize the potential for patent hold-up or patent litigation by strangers to MoCA.”
12 (*Id.*, ¶ 544). Those provisions included requirements that the standards themselves
13 would remain confidential to MoCA members. (*Id.*, ¶¶ 544-46). Yet, induced by
14 millions in payments, MaxLinear breached these confidentiality obligations and
15 provided Plaintiff the confidential MoCA standards that form the basis of Plaintiff’s
16 infringement claims. (*Id.*, ¶¶ 568-70). As a result, Cox has not received the intended
17 benefits of its MoCA membership, including that any essential patents would remain
18 under the ownership of an Alliance Party, and that Cox would be able to require or
19 request an offer of a RAND license and negotiation of same from MaxLinear. (*Id.*, ¶
20 572). Quite the opposite as Cox has been sued now, by a third party, for what
21 Entropic’s disclosure in this case claims would be damages of \$200 million and has
22 incurred—and will continue to incur—significant costs defending this improper
23 action.

24 Plaintiff presents two arguments in challenge of Cox’s pleading, neither of
25 which has merit. First, Plaintiff contends the confidential MoCA information belongs
26 to MoCA and its members, so Cox cannot plausibly claim harm by its disclosure. (DE
27 329-1 at 23). But Paragraph 544 pleads that the MoCA standards themselves were
28 confidential to MoCA and its members, while paragraph 546 pleads that “Confidential

Information” included materials so “designated in writing as confidential” by MoCA and “[a]ll Alliance Draft Deliverable(s), Approved Draft Deliverable or Deliverables,” i.e., the standards themselves. (DE 266-1, ¶¶ 544, 546). Cox then quoted from those same standards, including the notice that “[t]his document and each element of this document are the Confidential Information of ... MoCA and” its members and both “may enforce such obligations of confidentiality directly.” (*Id.*, ¶ 546). And, Cox averred that in 2021—while Cox was a member—[REDACTED], Plaintiff” improperly obtained confidential MoCA materials. (*Id.*, ¶ 569). In short, Cox can enforce MaxLinear’s 2021 breach of confidentiality and recover for the resulting harm. (*Id.*, ¶¶ 561, 562, 569-70, 572-73).

Second, Plaintiff again improperly raises the litigation privilege in an attempt to avoid the consequences of its actions; however, as set forth above, the litigation privilege does not render Cox’s properly alleged, cognizable harms inappropriate. Likewise, Plaintiff’s claim that the IPR Policy at Section 5.1.1 authorizes suit by saying it does “not prohibit the Alliance Party from seeking or receiving damages” is immaterial because Plaintiff is *not* an Alliance Party. (DE 329-1 at 23). Finally, Plaintiff’s speculation that it did not have to induce breach, as it did, because it *could* have filed suit without the MoCA standards is just a hypothetical argument it (possibly) can ask a jury to accept, but does not bar Cox’s counterclaims.

4. The Court Has Supplemental Jurisdiction Over Cox’s Claim for Tortious Interference Based on MaxLinear’s Breach of its Confidentiality Obligations

The Court has supplemental jurisdiction over Cox’s tortious interference claim based on MaxLinear’s breach of its confidentiality obligations because these claims arise from the same set of facts as the federal claims. *See* 28 U.S.C. § 1367; (DE 266-1, at ¶ 526). “Section 1367 . . . provides that supplemental jurisdiction extends to all state claims that are part of the same case or controversy as the federal claim.”

1 *Bazarganfard v. Club 360 LLC*, No. 2:21-cv-02272-CBM-PLA(x), 2023 WL
2 2354810, at *14 (C.D. Cal. Jan. 26, 2023).

3 Notably, Plaintiff does not contest supplemental jurisdiction exists for Cox’s
4 claim of tortious interference based on Plaintiff’s inducement of MaxLinear’s
5 breaches relating to improper assignment of the asserted patents. (DE 329-1 at 25-
6 26). Instead, Plaintiff asserts only that the Court lacks supplemental jurisdiction of
7 Cox’s tortious interference claim to the extent it relates to MaxLinear’s breach by
8 disclosing confidential information. (*Id.*).

9 Plaintiff’s strained effort to find some basis for dismissal falls flat. As an initial
10 matter, Plaintiff’s argument ignores that Cox’s allegations that MaxLinear breached
11 the confidentiality obligations are part of the same breach of contract claim and same
12 tortious interference claim; they are simply further allegations identifying
13 MaxLinear’s breaches. Thus, given Plaintiff acknowledges the Court has
14 supplemental jurisdiction over Cox’s claim for some acts resulting in the alleged
15 breach, it does not—and cannot—show the absence of supplemental jurisdiction for
16 other acts.

17 Even so, under the case law Plaintiff cites, it is clear this Court has
18 supplemental jurisdiction. (DE 329-1 at 25-26). Cox’s tortious interference claim
19 involves acts that implicate Plaintiff’s right to assert infringement, “which raises
20 questions of patent validity and infringement.” *Fortinet, Inc. v. Forescout Techs., Inc.*,
21 No. 20-cv-03343-EMC, 2021 WL 5565836, at *19 (N.D. Cal. Nov. 29, 2021). Thus,
22 because Plaintiff’s right to relief involves resolution of a substantial question of patent
23 law, the patent and tortious interference claims “arise in the same ‘nucleus of
24 operative fact.’” *Id.* Moreover, Cox’s tortious interference claim avers facts relating
25 to ownership and enforcement of the asserted patents, and necessarily overlap with
26 the facts relating to the patent infringement claims. This is far from the circumstances
27 in *Cheng v. AIM Sports, Inc.*, where the Court determined it did not have supplemental
28

jurisdiction because “there is no *common* nucleus of operative fact.” No. CV 10-3814 PSG (PLAx), 2011 WL 13176754, at *5 (C.D. Cal. May 19, 2011).

Supplemental jurisdiction over Cox’s tortious interference claim is proper.

B. Cox Properly Seeks Declaratory Judgment Voiding the Assignments

Contrary to Plaintiff’s assertion, Cox has alleged a set of facts support a declaratory judgment that the patent assignments to Plaintiff are void.

Plaintiff argues that Cox’s allegations are deficient because it claims (1) an assignment is not void simply because it does not recite an existing encumbrance as encumbrances run with the patents; (2) Cox cannot point to express language voiding third party assignments; and (3) [REDACTED]

[REDACTED] (DE 329-1 at 26-27). Plaintiff’s arguments are factually and legally incorrect and miss the point. The crux of Cox’s counterclaim seeking declaratory judgment is that Plaintiff and MaxLinear affirmatively sought to strip out any encumbrance on the patents through their assignment and doing so was a violation of the IPR Policy, the remedy for which is the assignment is void. (DE 266-1, ¶¶ 567, 579, 581-82).

Plaintiff never addresses Cox’s point that MaxLinear had to retain the right to grant RAND licenses under the IPR Policy. The relevant agreements all transfer all rights and interests in the patents, without reserving that right as MaxLinear was required to do. This alone is a fatal flaw in Plaintiff’s arguments. But, independently, Cox’s averments show that Plaintiff and MaxLinear’s assignments *affirmatively* sought to strip out any encumbrance, including any RAND encumbrances caused by the IPR Policy, so that Plaintiff was unconstrained by the licensing limitations to which MaxLinear was constrained. (DE 266-1, ¶¶ 558, 565-67, 581).

Plaintiff now seeks to escape the consequences of its actions by claiming that the breaches did not matter for a host of reasons. But it is irrelevant to the adequacy of the pleadings whether the obligations under the IPR Policy run with the patents,

1 whether the IPR Policy has an express provision voiding third party assignments, or
2 that MaxLinear represented in the Patent Purchase Agreement that it made a “*general*
3 commitment to license on Reasonable and Non-Discriminatory (RAND) terms” to
4 any Standards Bodies. Cox has sufficiently pled that MaxLinear and Plaintiff seek to
5 evade RAND commitments by assigning patents free of any obligations under the
6 *specific commitments* of the IPR Policy in violation of multiple provisions, and such
7 assignment is thus void.

8 Moreover, declaratory relief is appropriate “(1) when the judgment will serve
9 a useful purpose in clarifying and settling the legal relations in issue, and (2) when it
10 will terminate and afford relief from the uncertainty, insecurity, and controversy
11 giving rise to the proceeding.” *Guerra v. Sutton*, 783 F.2d 1371, 1376 (9th Cir. 1986).
12 Here, the issues need clarification. Entropic asserts infringement claims based on
13 patents obtained through assignments that are void in view of the MoCA IPR Policy,
14 raising issues of who owns the patents. Plaintiff does not dispute that declaratory
15 judgment in Cox’s favor on this issue would clarify and settle issues in this case—
16 including Plaintiff’s ability to make infringement claims. *See Viskase Corp. v. Am.*
17 *Nat. Can Co.*, 261 F.3d 1316, 1328 (Fed. Cir. 2001) (“It is well established that all
18 entities having substantial rights in the patent must join or be joined in infringement
19 litigation,” which rule “prevent[s] the possibility of multiple suits”). Cox’s
20 counterclaim is thus appropriate.

21 **V. IN THE ALTERNATIVE, THE COURT SHOULD GRANT COX**
22 **LEAVE TO AMEND**

23 Plaintiff’s arguments misstate the law and ignore the many factual allegations
24 in Cox’s counterclaims, which put Plaintiff on notice of the claims against it. But if
25 the Court is inclined to dismiss one or more claims, Cox requests that it be given leave
26 to amend the counterclaims to address any deficiencies. There is a strong public policy
27 in favor of permitting amendment, and the Ninth Circuit has made clear “Rule 15’s
28 policy of favoring amendments to pleadings should be applied with ‘extreme

1 liberality.’” *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). Without specifically
2 finding undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies,
3 prejudice to the opposing party, or futility of amendment, it is an abuse of discretion
4 to refuse to grant leave to amend a complaint. *Foman v. Davis*, 371 U.S. 178, 182
5 (1962); *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).

6 The party opposing amendment bears the burden of showing prejudice, which
7 Plaintiff has not even attempted to do. *DCD Programs, Ltd. v. Leighton*, 833 F.2d
8 183, 187 (9th Cir. 1987). The factors weigh in favor of granting leave to amend. Cox
9 did not delay and has not acted in bad faith or with dilatory motive. Cox has only
10 amended its counterclaims once, and it did so in good faith. Moreover, the Court has
11 not ruled that any deficiencies exist in Cox’s counterclaims to date.

12 **VI. CONCLUSION**

13 For all of these reasons, Cox requests that the Court deny Plaintiff’s Motion to
14 Dismiss in its entirety.

1 Dated: March 1, 2024

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